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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,038	03/22/2004	Sally Mackenzie	1231-218	1263
32905	7590	09/26/2006		
JONDLE & ASSOCIATES P.C. 858 HAPPY CANYON ROAD SUITE 230 CASTLE ROCK, CO 80108			EXAMINER KUBELIK, ANNE R	
			ART UNIT 1638	PAPER NUMBER

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/806,038	MACKENZIE ET AL.
	Examiner Anne R. Kubelik	Art Unit 1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 July 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
 - 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 July 2006 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This application contains claims 1-14 drawn to an invention treated as an election without traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Sequence Rules

3. This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825.

Sequence identifiers are missing from the sequences listed in Figure 3.

Full compliance with the sequence rules is required in response to this Office action. A complete response to this Office action must include both compliance with the sequence rules and a response to the issues set forth herein. Failure to fully comply with both of these requirements in the time period set forth in this Office action will be held to be non-responsive.

Claim Rejections - 35 USC § 102

4. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Rédei (1973, Mutation Res. 18:149-162) taken with the evidence of the instant specification. The rejection is repeated for the reasons of record as set forth in the Office action mailed 13 April 2006. Applicant's arguments filed 5 July 2006 have been fully considered but they are not persuasive.

Rédei teaches an *Arabidopsis* mutant in which the expression of an MSH1-homologous gene, *chm*, is suppressed (pg 150, paragraph 3). The aberrant phenotype of the mutant includes white-green-yellow variegation, rough, ragged appearance, and male and/or female sterility (paragraph spanning pg 150-153). The instant specification teaches that *CHM* is the MSH1-homologue AtMSH1 (pg 7, line 4).

Applicant urges that Rédei did not find cytoplasmic male sterility associated with the *chm* mutant, while the instant specification teaches cytoplasmic male sterility arising from mitochondrial ectopic recombination, and is thus different from Rédei (response pg 15).

This is not found persuasive because Rédei teaches that some of the cytoplasmic mutant plants produced by the *chm* mutant were male and/or female sterile (paragraph spanning pg 150-153).

5. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Martínez-Zapater et al (1992, Plant Cell 4:889-899) taken with the evidence of the instant specification. The rejection is repeated for the reasons of record as set forth in the Office action mailed 13 April 2006. Applicant's arguments filed 5 July 2006 have been fully considered but they are not persuasive.

Martínez-Zapater et al teach an *Arabidopsis* mutant in which the expression of an MSH1-homologous gene, *CHM*, is suppressed (pg 890, paragraph 2). The aberrant phenotype of the mutant includes white-green-yellow variegation and male sterility (pg 890, paragraph 2). The instant specification teaches that *CHM* is the MSH1-homologue AtMSH1 (pg 7, line 4).

Applicant urges that Martínez-Zapater et al did not find cytoplasmic male sterility associated with the *chm* mutant, while the instant specification teaches cytoplasmic male sterility

arising from mitochondrial ectopic recombination, and is thus different from Martínez-Zapater et al (response pg 15-16).

This is not found persuasive because Martínez-Zapater et al that some of the cytoplasmic mutant plants produced by their mutant were male sterile (pg 890, paragraph 2-3).

Conclusion

6. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

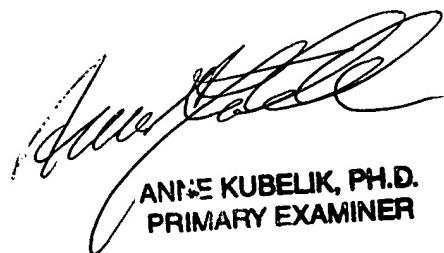
The central fax number for official correspondence is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Anne Kubelik, Ph.D.
September 12, 2006



ANNE KUBELIK, PH.D.
PRIMARY EXAMINER